



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2011-0332; FRL – 9743-6]**

**Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Antibacksliding of Major NSR SIP Requirements for the One-Hour Ozone National Ambient Air Quality Standards (NAAQS); Major Nonattainment NSR (NNSR) SIP Requirements for the 1997 Eight-Hour Ozone NAAQS; and Major NSR Reform Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the SIP for the State of Texas that relate to antibacksliding of Major NSR SIP Requirements for the one-hour ozone NAAQS; Major NNSR SIP requirements for the 1997 eight-hour ozone NAAQS; Major NSR Reform Program with Plantwide Applicable Limit (PAL) provisions; and non-PAL aspects of the Major NSR SIP requirements, because these changes comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted revisions to these programs in two separate SIP submittals on March 11, 2011. On August 29, 2012, Texas submitted SIP revisions (adopted July 25, 2012) that it had previously proposed February 22, 2012, for parallel processing. On May 3, 2012, Texas provided a letter to EPA which included a

demonstration showing how its submitted rules are at least as stringent as the Federal NSR Reform Program. EPA proposed approval of these revisions on June 20, 2012. Today, EPA is approving the two SIP revisions submitted March 11, 2011; the revisions submitted August 29, 2012; and the May 3, 2012, letter as part of the Texas NSR SIP. EPA is approving these provisions under section 110 and parts C and D of the Act.

**DATES:** This rule is effective on **[Insert date 30 days from the date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0332. All documents in this docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publically available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publically available only in hard copy form. Publically available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day

of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733; telephone (214) 665-7212; fax number (214) 665-6762; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever any reference to “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background**

### *A. What is the Background of the Texas Programs for Major NSR for the Eight-Hour NAAQS for Ozone and for NSR Reform?*

#### **1. Major NSR for the Eight-Hour NAAQS for Ozone**

On April 30, 2004, EPA promulgated regulations (69 FR 23858) that included requirements for implementing Major NSR for the 1997 eight-hour ozone NAAQS. On May 25, 2005, the TCEQ adopted SIP revisions to implement these requirements and submitted them to EPA on June 10, 2005. The EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted May 25, 2005, and submitted further revisions, adopted February 9, 2011, to address EPA's September 15, 2010, disapproval. Sections I.B and I.D of this preamble include further details on TCEQ's submission.

#### **2. NSR Reform**

On December 31, 2002 (67 FR 80186), EPA promulgated its NSR Reform Program. On November 7, 2003 (68 FR 63021), EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform Program's rules. On January 11, 2006, TCEQ adopted its regulations for NSR Reform and on February 1, 2006, submitted these regulations to EPA for SIP approval. EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because

the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted January 11, 2006, and submitted further revisions, adopted February 9, 2011, to address the grounds for EPA's September 15, 2010, disapproval. On February 22, 2012, TCEQ proposed additional revisions to these regulations and requested that EPA parallel process these revisions with the revisions submitted March 11, 2011, based upon the revisions that TCEQ proposed February 22, 2012. The TCEQ adopted these proposed revisions on July 25, 2012, and submitted them to EPA on August 29, 2012. Finally, TCEQ submitted a letter dated May 3, 2012, to EPA to meet its Federal NSR Reform Program demonstration requirements that provides its interpretation of certain NSR Reform rules to further clarify and ensure implementation consistent with the Federal NSR Reform Program. Sections I.B and I.D of this preamble include further details of what TCEQ submitted.

*B. What Changes did Texas Submit?*

On March 11, 2011, the TCEQ submitted the following revisions to the Texas SIP:

- New Source Review for Eight-Hour Ozone Standard; Rule Project Number 2005-009-116-AI, adopted May 25, 2005. These revisions were originally submitted on June 10, 2005. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011, included the resubmittal of the 2005 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- Federal New Source Review Permit Rules Reform; Rule Project Number 2006-010-116-PR, adopted January 11, 2006. These revisions were originally submitted on February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions

submitted March 11, 2011, included the resubmittal of the 2006 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.

- New Source One-Hour Ozone Major Source Thresholds and Emission Offsets; Rule Project Number 2008-030-116-PR, were adopted February 9, 2011, and submitted March 11, 2011.

- New Source Review (NSR) Reform; Rule Project Number 2010-008-116-PR, were adopted February 9, 2011, and submitted March 11, 2011.

- NSR Reform Revisions; Rule Project Number 2012-015-116-AI, were adopted July 25, 2012, and submitted August 29, 2012; which include revisions proposed February 22, 2012, for parallel processing.

- A letter dated May 3, 2012, which requested that EPA parallel process the revisions proposed February 22, 2012, and further included a demonstration showing that certain of its submitted rules are at least as stringent as the Federal NSR Reform Program.

Additional information on the submitted SIP revisions is included in the proposed rulemaking for this final rule and in the Technical Support Document (TSD) which is located in the docket.<sup>1</sup>

### *C. Proposal and Public Comments*

On June 20, 2012, EPA proposed to approve these revisions (77 FR 36964). We established a public comment period and requested that interested parties submit comments on the proposal for a period of 30 days (until July 20, 2012). We received comments from one industry group and three citizens. We address these comments in section II of this preamble.

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<sup>1</sup> The Technical Support Document is in the docket for this action as document number EPA-RO6-OAR-2011-0332-0008. You can access this document at <http://www.regulations.gov/#!documentDetail;D=EPA-RO6-OAR-2011-0332-0008>. After you open this address, click on the “PDF” icon to open the document.

*D. Overview of Today's Final Rule*

As discussed above, we reviewed the rules that TCEQ submitted in two submittals dated March 11, 2011, and August 29, 2012. We proposed to approve the latter submittal, as proposed by TCEQ on February 22, 2012, using our parallel processing authority. TCEQ adopted the latter submittal on July 25, 2012, without change from its proposal.

In summary, we are approving the following revisions that TCEQ submitted to ensure that the rules are consistent with Federal requirements and approvable by EPA:

- Anti-backsliding of major NSR SIP requirements for the one-hour ozone NAAQS, in areas that are also nonattainment for the eight-hour ozone NAAQS.
- The Federal requirements for applicability of the 8-hour ozone requirements in non-attainment areas being the date of issuance of the permit.
- The Plantwide Applicability Limit (PAL) provisions as follows:
  - Limited PALs to existing major stationary sources.
  - Created provisions for PAL re-openings to make corrections that relating to PAL increases; PAL decreases; new applicable requirements (for example, NSPS); reductions to PALs to avoid causing or contributing to a violation to a NAAQS or PSD increment or an quality related value identified for a Federal Class I area.
  - Created revisions for PAL invalidation for failure to use a monitoring system prescribed by the PAL.
  - Adopted provisions to clarify that PALs are applicable to major stationary sources only and the TCEQ added language to require that all emission

units at the major stationary source that emit the PAL pollutant be included in the PAL permit application.

- Adopted necessary definition changes for “baseline actual emissions” that specify that the calculations of baseline actual emissions for a PAL is an average rate.
- Adopted new definitions for the PAL program specific monitoring definitions in its rules such as Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Continuous Parameter Monitoring System (CPMS), and Predictive Emissions Monitoring System (PEMS).
- Modified the definition of “plant-wide applicability limit effective date” by removing references to the date a Flexible Permit was issued.

TCEQ also provided a clarification letter to EPA on May 3, 2012, which includes:

- A written demonstration for how the definition of “plantwide applicability limit” provides that emission limits in its PAL Permits meets the Federal requirements for being enforceable as a practical matter.
- A written demonstration that monitoring data must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL.
- A written clarification that the Texas rules provides for the PAL limit to be enforced on a 12-month rolling average, and that *for compliance purposes*, the emission calculations must include emissions from startups, shutdowns, and malfunctions, including outlining that their rules require regulated entities, regardless of whether they have a PAL permit, to record (and in some cases



report) emissions events, which include unscheduled maintenance, startup, and shutdown (MSS) activity emissions, with additional clarification that emissions from malfunctions are unauthorized emissions as defined in 30 TAC 101.1(107); therefore, they are unauthorized (non-compliant) emissions.

TCEQ also addressed EPA's concerns about several non-PAL aspects of the major NSR SIP requirements including:

- Explicitly limiting the definition of "Facility" to an emissions unit by adding the clarification language that the use of "facility" by adding "or emissions unit" to the terms "facility" or "facilities."
- Revising the definitions of "baseline emissions" and "projected actual emissions" to require the inclusion of emissions resulting from startups and shutdowns.
- Revisions to clarify that startup and shutdown emissions reported under Chapter 101 be included in the calculation of baseline actual emissions but only to the extent that they have been authorized or are being authorized to ensure that *non-compliant emissions are excluded* from baseline actual emissions.
- Amending the definition of "projected actual emissions" by replacing the phrase "unauthorized emissions from startup and shutdown activities" with "emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 to ensure that this definition is compatible with the definition of "baseline actual emissions."

We are taking final action to approve these revisions for the reasons discussed in the EPA's June 20, 2012, proposal, and in our response to comments discussed in section II. Please refer to the proposal and the TSD for the additional information on the basis for this final action.

## **II. What Comments Did We Receive and What is Our Response to the Comments?**

We received comments from the Texas Industry Project (TIP) and from three citizens. These comments and our responses are summarized below.

### **A. *Comment Relating to Invalidation of PAL Permits Because of Monitoring Malfunctions or Downtime.***

*Comment.* We received a comment from TIP requesting that EPA confirm that its interpretation of proposed revisions to 30 TAC 116.186(b)(9) and associated Federal PAL provisions that PAL permits will not be invalidated because of monitoring malfunctions and other downtime. The commenter stated that each of these provisions states that “[f]ailure to use a monitoring system that meets the requirements of this section renders the PAL permit invalid” as stated at 37 *Tex. Reg.* 1661, 1674 (March 9, 2012); and in the Federal rules at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). This would be consistent with TCEQ’s interpretation, which is: “[T]he phrase ‘failure to use’ in EPA’s rule means failure to install or operate the prescribed monitoring device or system to operate under a PAL permit, rather than an inadvertent malfunction or maintenance downtime of the monitoring device or system.” See 37 *Tex. Reg.* at 1663. This also appears to be consistent with EPA’s interpretation. See 75 FR 56424, at 56438 (September 15, 2010) (indicating EPA’s intent to require State PAL programs to provide for “invalidating the PAL if there is no compliance with the required monitoring”). This interpretation is also consistent with other PAL provisions that acknowledge the possibility of monitoring malfunctions or other downtime. For example, the “monitoring system” can rely on

emissions factors. See 40 CFR 51.165(f)(12)(ii)(D) and 51.166(w)(12)(ii)(d); and 30 TAC 116.186(c)(3)(D). The rules also require recording and reporting maximum emissions “during any period of time that there is no monitoring data,” unless another method is specified in the permit. See 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii); and 30 TAC 116.186(b)(8). As another example, the rules call for periodic reporting of “deviations or monitoring malfunctions.” See 40 CFR 51.165(f)(14)(i)(E) and 51.166(w)(14)(i)(e); and 30 TAC 116.186(b)(4)(C)(v).

*Response.* EPA confirms that the requirements in 30 TAC 116.116(b)(9) do not require PAL permits to be invalidated because of monitoring malfunctions or maintenance performed in accordance with applicable Federal regulations and with appropriate backup and provision for substitute data. EPA’s December 31, 2002, NSR Reform rulemaking provides:

You will also need to provide calculations for the maximum potential emissions without considering enforceable emission limitations or operational restrictions for each unit in order to determine emissions during periods when the monitoring system is not in operation or fails to provide data. In lieu of the permit requiring maximum potential emissions during periods when there is no monitoring data, you may propose another alternate monitoring approach as a backup. This backup monitoring, however must still meet the minimum requirements for the monitoring approaches prescribed in the regulation.

See 67 FR 80186, at 80213. The requirement is also provided in the Federal PAL rule at 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii). The Federal PAL rule contemplates circumstances when the monitoring system is not in operation or fails to provide data (such as during periods of malfunction or maintenance) during which the PAL permit need not be invalidated when the applicant either provides calculations for the maximum potential emissions without considering enforceable emission limitations or operational restrictions for each unit in order to determine emissions or uses another alternate monitoring approach that meet the minimum requirements for the monitoring approaches prescribed in the regulation.

TCEQ outlined in its July 25, 2012, adoption, the following:

Any invalidation of a PAL permit will be subject to necessary and appropriate procedures in the Texas statutes and TCEQ rules. Texas Water Code (TWC), § 7.302, regarding Grounds for Revocation or Suspension of Permit, provides the commission the authority to suspend or reissue a permit on prescribed grounds after notice and hearing. Prior to any invalidation of a PAL permit, the commission anticipates enforcement action that could include a request for revocation.

See the August 29, 2012, submittal of revisions to 30 TAC 116.186(b)(9), final rule, Section by Section Discussion, on pages 9 - 10. Furthermore, the requirements relating to periods when monitoring data are not available because of monitoring malfunctions or maintenance are included in 30 TAC 116.186(b)(8) which provides that during the absence of monitoring data, “[a] source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.” The requirements of 30 TAC 116.186(b)(8) are approvable because they meet the requirements of 40 CFR 51.165(f)(12)(vii) and 51.166(w)(12)(vii) as discussed above.

*B. Comment Relating to Interference with Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act.*

*Comment.* TIP commented that it supports EPA’s proposed approval of each applicable Texas regulation because these regulations comply with the Federal Clean Air Act and are important components of Texas’s stationary source permitting program. TIP further agrees with EPA’s analysis that the Texas PAL rules are environmentally protective because they “will generally be established at a level that is lower than the allowable emissions established in the

pre-existing permit” and “create[] [an] incentive for an owner or operator to create room for growth.” See 77 FR 36964, at 36979.

*Response.* EPA acknowledges the above comment.

*C. General comments.*

EPA received three comments from citizens on this proposed rule. Each of these comments relates to the proposed New Source Performance Standard (NSPS) for Greenhouse Gases which is outside the scope of this action.

### **III. Final Action**

Under section 110(k)(3) and parts C and D of the Act and for the reasons stated above, EPA approves the following revisions to the Texas SIP:

- Revisions to 30 TAC 116.12 – Nonattainment and Prevention of Significant Deterioration Review Definitions – adopted May 25, 2005, submitted June 10, 2005, and resubmitted March 11, 2011; revisions adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; two revisions adopted February 9, 2011, submitted March 11, 2011; revisions adopted July 25, 2012, and submitted August 29, 2012; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ’s interpretation of 30 TAC 116.12(22).
- Revisions to 30 TAC 116.115 – General and Special Conditions – adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.127 – Actual to Projected Actual and Emission Exclusion Test for Emissions – adopted January 11, 2006, submitted February 1, 2006 (as 30 TAC 116.121) and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011, which redesignated this section to 30 TAC 116.127.

- Revisions to 30 TAC 116.150 – New Major Source or Major Modification in Ozone Nonattainment Area – adopted May 25, 2005, submitted June 10, 2005, and resubmitted March 11, 2011; revisions adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted July 25, 2012, and submitted August 29, 2012.

- Revisions to 30 TAC 116.151 – New Major Source or Major Modification in Nonattainment Areas Other Than Ozone – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision); and revisions adopted July 25, 2012, and submitted August 29, 2012.

- New 30 TAC 116.180 – Applicability – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; revisions adopted February 9, 2011, and submitted March 11, 2011; and revisions adopted July 25, 2012, and submitted August 29, 2012.

- New 30 TAC 116.182 – Plant-Wide Applicability Permit – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.

- New 30 TAC 116.184 – Application Review Schedule – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision).

- New 30 TAC 116.186 – General and Specific Conditions – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; revisions adopted February 9, 2011, and submitted March 11, 2011; revisions adopted July 25, 2012, and submitted August 29, 2012; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116.186.

- New 30 TAC 116.188 – Plant-Wide Applicability Limit – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.190 – Federal Nonattainment and Prevention of Significant Deterioration Review – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.192 – Amendments and Alterations – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011; and revisions adopted February 9, 2011, and submitted March 11, 2011.
- New 30 TAC 116.196 – Renewal of a Plant-Wide Applicability Limit Permit – adopted January 11, 2006, submitted February 1, 2006; and resubmitted March 11, 2011 (without further revision).
- New 30 TAC 116.198 – Expiration or Voidance – adopted January 11, 2006, submitted February 1, 2006, and resubmitted March 11, 2011 (without further revision).

EPA is also amending the second table under 40 CFR 52.2270(e) entitled “EPA Approved Nonregulatory and Quasi-Regulatory Measures in the SIP” to include TCEQ’s May 3, 2012, “Letter of explanation and interpretation of the Texas SIP for NSR Reform.”

Finally, EPA is amending 40 CFR 52.2273(d) to remove the references to rules that were disapproved September 15, 2010, and which are now approved in this action.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C.

7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this notice merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and



- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined in 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 11, 2012.

Samuel Coleman, P.E.,  
Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS []**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. Section 52.2270 is amended as follows:

a. The table in paragraph (c) entitled “EPA Approved Regulations in the Texas SIP” is amended as follows:

i. By revising the entries under “Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification” for Sections 116.12, 116.115, 116.150, and 116.151.

ii. By adding a new entry for Section 116.127 in numerical order under Chapter 116 (Reg 6), Subchapter B – New Source Review Permits, and Division 1 – Permit Application.

iii. By adding a new heading immediately following the entry for Section 116.176 entitled “Subchapter C – Plant-Wide Applicability Limits”, followed by a new heading entitled “Division 1 – Plant-Wide Applicability Limits”, followed by new entries for Sections 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.196, and 116.198.

b. Paragraph (e) is amended by adding a new entry for “Letter of explanation and interpretation of the Texas SIP for NSR Reform” at the end of the second table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP.”

## § 52.2270 Identification of plan.

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### EPA-Approved Regulations in the Texas SIP

State Citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * * * *	* * * * *			
<b>Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification</b>				
<b>Subchapter A – Definitions</b>				
* * * * *	* * * * *			
Section 116.12	Nonattainment and Prevention of Significant Deterioration Review Definitions	7/25/2012	[Insert date of publication in FR], [Insert FR page number where document begins].	The SIP includes TCEQ's letter dated 5/3/2012, which explains and clarifies TCEQ's interpretation of the definition of "plant-wide applicability limit" in paragraph (22).
* * * * *	* * * * *			
<b>Subchapter B – New Source Review Permits</b>				
<b>Division 1 – Permit Application</b>				
* * * * *	* * * * *			
Section 116.115	General and Special Conditions	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
* * * * *	* * * * *			
Section 116.127	Actual to Projected Actual and Emission Exclusion Test for Emissions	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
* * * * *	* * * * *			
<b>Division 5 – Nonattainment Review</b>				
Section 116.150	New Major Source or Major Modification in Ozone Nonattainment Area	7/25/2012	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.151	New Major Source or Major Modification in Nonattainment Area Other than Ozone	7/25/2012	[Insert date of publication in FR], [Insert FR page number where document begins].	
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<b>Subchapter C – Plant-wide Applicability Limits</b>				
<b>Division 1 – Plant-wide Applicability Limits</b>				
Section 116.180	Applicability	7/25/2012	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.182	Plant-Wide Applicability Limit Permit Application	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.184	Application Review Schedule	1/11/2006	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.186	General and Specific Conditions	7/25/2012	[Insert date of publication in FR], [Insert FR page number where document begins].	The SIP includes TCEQ’s “Letter of explanation and interpretation of the Texas SIP for NSR Reform” dated 5/3/2012, which explains and clarifies TCEQ’s interpretation of paragraphs (a), (b)(9) and (c)(2).
Section 116.188	Plant-Wide Applicability Limit	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.190	Federal Nonattainment and Prevention of Significant Deterioration Review	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.192	Amendments and Alterations	2/9/2011	[Insert date of publication in FR], [Insert FR page number where document begins].	
Section 116.196	Renewal of Plant-Wide Applicability Limit Permit	1/11/2006	[Insert date of publication in FR], [Insert FR page number where document begins].	

Section 116.198	Expiration and Voidance	1/11/2006	<b>[Insert date of publication in FR], [Insert FR page number where document begins].</b>	
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(e) \* \* \*

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### EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Comments
* * * * *				
Letter of explanation and interpretation of the Texas SIP for NSR Reform	Statewide	5/3/2012	<b>[Insert date of publication in FR], [Insert FR page number where document begins].</b>	Letter dated 5/3/2012 from TCEQ to EPA explains and clarifies TCEQ's interpretation of section 116.12(22); and section 116.186(a), (b)(9), and (c)(2).

\* \* \* \*

### 3. Section 52.2273(d) is amended as follows:

- a. By removing paragraphs (d)(1)(ii) through (iii).
- b. By removing and reserving paragraphs (d)(2) through (3).
- c. By removing and reserving paragraphs (d)(4)(i) through (vii).
- d. By removing paragraphs (d)(4)(ix) through (x).

### § 52.2273 Approval status.

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(d) \* \* \*

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(2) - (3) [Reserved]

(4) \* \* \*

(i) - (vii) [Reserved]

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[FR Doc. 2012-26094 Filed 10/24/2012 at 8:45 am; Publication Date: 10/25/2012]